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HIGH COURT OF DELHI : NEW DELHI

Date of reserve : September 05, 2007

Date of decision: September 24, 2007

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W.P. (C) No. 1227-33/2006

% Workmen of CPWD ...Petitioner
Through: Mr. Varun Prasad, Advocate

versus

Government of India & Others ...Respondents
Through: Mr. R.V. Sinha, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

VIPIN SANGHI, J.

1. The question which arise before us for consideration in this Writ Petition directed against order of the Central Administrative Tribunal in O.A. No. 2429/2005, and MA No.2138/2005 dated 7th November 2005, is whether the Respondent committed any illegality while issuing a clarification in respect of the Assured Career Progression (ACP) Scheme dated 9.8.1999, vide DOP & T Office Memorandum dated 21.5.2001 to

the following effect:

“Recruitment of Trade Test, where prescribed, has to be met before grant of financial upgradation. Only a person, who is fully eligible for promotion under Recruitment Rules but fails to secure a promotion within 12/24 years is eligible for grant of financial upgradation under ACP. As such, the proposal cannot be accepted.”

2. The Petitioners 2 to 7 were regularized as Mason/Khallasi/Wireman/Operator(E&M)/Beldar, by the Respondent sometime between 1986-1993. The Petitioners claim that they have completed more than 12 years of regular services and consequently, under the Assured Career Promotion scheme dated 9.8.1999, they became entitled to benefit of the said scheme. Petitioner No.1 is a Trade Union registered under the Trade Unions Act. Petitioner No.2, 4, 5 and 6 viz. Ram Sahay, Sher Singh, Dwiwedi A.K., and Joginder Singh, are stated to be regular mason, wire man and Operators (E&M) i.e. Group 'C' employees, Petitioner Nos. 3 and 7, viz. Manvar Singh and Bulle Ram are stated to be regular Khallasi and Baildar, i.e. Group 'D' employees. The pay scale of Group 'D' employees is Rs.2550-3200 while the pay scale of Group 'C' is Rs.3550-4590. The Petitioners claim that under the Assured Career Promotion scheme they are entitled to first financial up gradation after 12 years of regular service in the pay scale of Rs.3050-4590 for

Group `D' employees and Rs.4000-6000 for Group C employees. However, they complain that the Group `D' employees have been placed in lower pay scale of Rs.2610-4000 and Group C employees have been denied the benefit of the ACP Scheme altogether.

3. The Petitioner submits that for getting the benefit of Assured Career Promotion scheme, under the said scheme, there was no such requirement of clearing the trade test and the respondents may hold a screening process only for considering their cases for promotion to the next higher post in their channel of promotion. They contend that by issuing clarifications the Assured Career Promotion scheme could not have been supplemented but only supplanted. By issuing the impugned classification, it is contended, the respondents have taken away the benefit to which the petitioners were entitled. The Petitioner's contend that the Assured Career Promotion scheme dated 9.8.1999 nowhere provides for any condition of passing the trade test or securing a license etc . As best, the Respondents were entitled to hold a DPC for screening the candidates to assess the eligibility as provided for under the Assured Career Promotion scheme like having qualification, if any, prescribed for the said purpose, but the same does not include the requirement of

passing a trade test required or obtaining the requisite license.

4. The Tribunal rejected the aforesaid submissions of the Petitioners by examining paragraph 6 of the OM dated 9.8.1999 whereby the Assured Career Promotion scheme was formulated. The Tribunal also relied upon a Full Bench judgment of the Chandigarh Bench in O.A.-125/CH/2003 and O.A.-465/CH/2003. The relevant extract from the aforesaid OM dated 9.8.1999 and the Full Bench decision of the Chandigarh Bench of the Tribunal as extracted by the Tribunal in its impugned order are reproduced herein below:

“6. We have carefully considered the submissions made by the learned counsel for the applicants. Para 6 of Annexure I of OM dated 9.8.1999 provides as follows:

“6. fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradation, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under

the ACP Scheme”

(emphasis supplied)

7. We also find that this issue has been considered by the Full Bench at Chandigarh in OA-125/CH/2003 and OA-465/CH/2003, wherein the following question was referred to the Full Bench:

“Whether a person, for getting financial upgradation under the ACP scheme dated 9.8.1999 to the next higher grade/scale is required to be possessed of educational qualifications required for appointment/promotion to the next higher post, carrying the same scale which is to be given now under the Scheme as a financial upgradation.”

The Full Bench has decided the said question in the following terms:

“Answer

A person for grant of financial upgradation under the ACP scheme dated 9.8.1999 to the next higher grade/scale is required to possess the educational qualifications required for appointment/promotion to the next higher post carrying the same scale.”

5. The Tribunal also noted that the view of the Full Bench of the Chandigarh Bench of the Tribunal was followed by the Jabalpur Bench, Circuit sitting at Bilaspur in O.A. No. 23/2001, 113/2003 and 327/2002.

6. The issue raised by the petitioners is no longer res

integra and is covered by a decision of this Court in **Deepak Kumar v. UOI & Ors**, W.P(C) No.7322/2002 decided on November 28, 2006 reported as 2007 (93) DRJ 328. the relevant extract from the said decision reads as follows:-

“It may be noticed that para 5 of OM dated 9.8.1999 and para 6 of Annexure 1 of the said OM are based on, rather are the manifestation of the recommendation of the Fifth Central Pay Commission itself. The Pay Commission while recommending the ACP Scheme itself suggested that moving to higher scale would be subject to fulfilment of usual norms of promotion and if this involves passing of a trade or departmental test or acquisition of higher qualifications, that pre-requisite would have to be fulfilled before the benefit of ACP Scheme is given.

Further, grant of automatic upgradation on completion of 12/24 years of regular service without meeting the usual norms is not the purpose of the Scheme. The ACP Scheme envisages financial upgradation where there are no promotional avenues. The intent is to avoid stagnation and provide a chance for upgradation to those who are meritorious but yet denied the same on account of non-availability of promotional avenues. The rationale and intent appears not to grant an automatic financial upgradation to all those who complete 12/24 years of service, irrespective of their performance. The inefficient and indolent are not to be rewarded by automatic financial upgradation. Services below the benchmark and those above cannot be equated. Accordingly, the provision for screening is necessary and essential to serve the purpose of the scheme. Normal promotional norms have to be applied for grant of financial upgradation under the ACP Scheme.”

7. We also do not find any merit in the petitioner's submission that the clarification in question supplants the ACP Scheme. A perusal of the aforesaid judgment shows that the ACP scheme itself postulated that for grant of the benefit of the said scheme, the conditions for grant of promotions have to be met. The upgradation granted to such of the Group `D' employees who are otherwise ineligible for promotion, in the scale of Rs.2610-4000 cannot become a reason for them to claim the benefit of the ACP Scheme. Consequently we see no merit in this petition and dismiss the same. No costs.

VIPIN SANGHI, J

A.K. SIKRI, J.

September 24, 2007
P.K. BABBAR